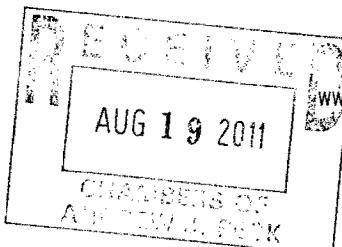


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**BY HAND**

Honorable Andrew J. Peck  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street, Room 20D  
New York, New York 10007

Emmet & Co., Inc. and First Manhattan Co. v. Catholic Health East and Merrill Lynch & Co., Inc.  
No. 11-Civ.-3272 (RMB) (AJP)

Dear Magistrate Judge Peck:

We represent defendants Catholic Health East and Merrill Lynch & Co., Inc. (together, "Defendants") in the above-captioned matter. In accordance with paragraph 5 of the Rule 16 IPTC Scheduling Order dated July 7, 2011, we write to inform Your Honor of Defendants' intent to file motions to dismiss the First Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Pursuant to Rule 2.A of the Individual Practices of Honorable Richard M. Berman and subject to the approval of the Court, Defendants intend to submit letters to Judge Berman by September 2, 2011 requesting a pre-motion conference on a date to be set by the Court.

Subject to the approval of the Court, Defendants propose the following schedule for their motions: (i) the motions shall be due 20 days from the date of the pre-motion conference; (ii) plaintiffs' opposition to the motions shall be due 30 days from the date the motions are served; and (iii) Defendants' replies shall be due 20 days from the date the plaintiffs' opposition is served. Defendants have conferred with counsel for plaintiffs, and they have informed us that they agree to the proposed schedule.

Respectfully submitted,

SO ORDERED.

  
Hon. Andrew J. Peck  
United States Magistrate Judge

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August 19, 2011

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cc: Honorable Richard M. Berman  
Aaron H. Marks, Esq. (via email)  
Gavin Schryver, Esq. (via email)

# ECF TRANSCRIPTION SHEET



ANDREW J. PECK  
UNITED STATES MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT  
Southern District of New York  
United States Courthouse  
500 Pearl Street, Room 1370  
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933  
Telephone No.: (212) 805-0036

Dated: August 19, 2011

Total Number of Pages: 3

## **TRANSCRIPTION OF MEMO ENDORSED ORDER**

Schedule below is approved. Nevertheless, discovery shall go forward on the existing schedule (inc cutoff of 11/14) – so it might make more sense to hold off and make the motion along with a summary judgment motion after the conclusion of discovery.

Copies by ECF to: All Counsel  
Judge Richard M. Berman